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ADE & COMPANY INC.
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In re Application of: WARUK, Jillian, et al. :
U.S. Application No.: 10/599,734 :
PCT No.: PCT/CA2005/000547 : DECISION ON PETITION
International Filing Date: 11 April 2005 :
Priority Date: 09 April 2004 :
Atty Docket No.: 82402-5802 :
For: Identification of the Precise Amino Acid :
Sequence of the Epitope Recognized by :
the Potent Neutralizing Human Anti- :
Hiv-1 Monoclonal Antibody IGG1B12 :
:

The present decision is issued in response to the petition for revival under 37 CFR 1.137(b) filed 28 November 2007.

BACKGROUND

On 11 April 2005, applicants filed international application PCT/CA2005/000547. The application claimed a priority date of 09 April 2004, and it designated the United States. On 20 October 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for entry into the U.S. national stage and submission of the basic national fee was thirty months from the priority date, i.e., 09 October 2006.

On 06 October 2006, applicants filed materials to initiate the U.S national stage of international application PCT/CA2005/000547 including, among other materials, payment of the small entity basic national fee.

On 30 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and sequence listing materials. This Notification afforded applicants two months to file a proper response, and it indicated that the response period could be extended pursuant to 37 CFR 1.136(a).

On 12 June 2007, applicants filed a response to the Notification of Missing Requirements that included the required sequence listing materials.

On 27 September 2007, the DO/EO/US mailed a "Notification of Defective Response" (Form PCT/DO/EO/916) indicating that applicants' 12 June 2007 response was defective for failure to include the required oath or declaration. This Notification afforded applicants one

month to file a proper response, and it indicated that the one month response period could not be extended pursuant to 37 CFR 1.136(a). However, the Notification did note that "the period of response set in the Notification of Missing Requirements may be extended under 37 CFR 1.136(a)."

On 28 November 2007, applicants filed the petition for revival considered herein, accompanied by an executed declaration.

DISCUSSION

A review of the application file reveals that, at the time the present petition for revival was filed, the application was not abandoned. Specifically, the five-month extendable period of reply available with respect to the Notification of Missing Requirements mailed 30 April 2007 had not yet expired (such extendable response period did not expire until 30 November 2007).

Applicants' 28 November 2007 submission includes the final outstanding requirement of the Notification of Missing Requirements mailed 30 April 2007, i.e., a declaration in compliance with 37 CFR 1.497. Applicants have also submitted a payment of \$770 as the small entity petition fee for the petition for revival. This payment will be applied to the five-month extension of time fee required for the 28 November 2007 filing to be considered a timely response to the Notification of Missing Requirements mailed 30 April 2007. The remaining \$345 necessary to complete the extension fee will be charged to deposit account number 01-0310.

Based on applicants' 28 November 2007 submission of the executed declaration and applicants' payment of the five-month extension fee required to make such submission a timely response to the Notification of Missing Requirements mailed 30 April 2007, the present application never became abandoned. Accordingly, the present petition for revival is moot.

CONCLUSION

The petition for revival under 37 CFR 1.137(b) filed 28 November 2007 is hereby
DISMISSED AS MOOT.

Deposit Account No. 01-0310 will be charged the \$345 necessary to complete the five-month extension fee required with respect to applicants' 28 November 2007 submission.

This application is being referred to the National Stage Processing Division of the Office of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 28 November 2007.

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